



SUBJECT: Staff Position on Temporary Trading Activities of American Stock Exchange Specialists, Registered Options Traders and Floor Brokers on the Philadelphia Stock Exchange Pursuant to SEC Release 34-44802 (September 17, 2001)

RELEASE NO: 01-ENF-2

DATE OF RELEASE: September 20, 2001

TYPE: Staff Position

PRIOR REFERENCE: None

BACKGROUND

The building housing the trading facilities of the American Stock Exchange (AMEX) sustained substantial damage as a result of the attacks on the World Trade Center in New York City on September 11, 2001. Additionally, the area surrounding the AMEX remains largely inaccessible to individuals other than emergency and rescue personnel and many basic services such as electricity, water and communication lines have not been reestablished as a result of the collapse of buildings and ensuing fires. The AMEX and the Philadelphia Stock Exchange (PHLX) submitted a proposed temporary rule to the U.S. Securities and Exchange Commission (SEC) that would permit AMEX members to trade AMEX options on the floor of the PHLX on a temporary basis until the AMEX facility is operational. SEC approved the proposed rule changes on an accelerated basis in SEC Release No. 34-44802, dated September 17, 2001.

STAFF POSITION ON AVAILABILITY OF EXCLUSION FROM THE DEFINITION OF BROKER-DEALER UNDER SECTION 102(v) OF THE PENNSYLVANIA SECURITIES ACT OF 1972

Section 102(v) of the Pennsylvania Securities Act of 1972 Act (1972 Act) provides an exclusion from the definition of broker-dealer for a person who has no place of business in Pennsylvania if the person effects transactions in Pennsylvania exclusively with or through the issuer of the securities involved in the transaction; or broker-dealers or institutional investors. It is the position of staff of the Pennsylvania Securities Commission (Commission) that this exclusion would remain available, if applicable, to any American Stock Exchange Specialist, Registered

Options Trader or Floor Broker (AMEX Person) which relied on this exclusion prior to September 17, 2001 and now temporarily is operating on the floor of the PHLX in compliance with SEC Release 34-44802 dated September 17, 2001 and any subsequent amendments thereto adopted by SEC.

STAFF POSITION ON AVAILABILITY OF BROKER-DEALER REGISTRATION EXEMPTION IN SECTION 301(a) OF THE PENNSYLVANIA SECURITIES ACT OF 1972

Section 301(a) of the 1972 Act provides an exemption from registration as a broker-dealer for persons that do not have a place of business in Pennsylvania if certain other conditions are met. A question has arisen whether the exemption would remain available to an AMEX Person that met all the conditions of the exemption prior to September 17, 2001 but now is temporarily operating on the floor of the PHLX. Staff will not recommend enforcement action to the Commission if an AMEX Person which, prior to September 17, 2001, met all the conditions of the exemption in Section 301(a) of the 1972 Act and continues to rely on the exemption even though the AMEX Person temporarily is operating on the floor of the PHLX, provided that the AMEX Person complies with SEC Release 34-44802 dated September 17, 2001 and any subsequent amendments thereto adopted by SEC.

STAFF NO ACTION POSITION ON THE AGENT REGISTRATION EXEMPTION UNDER SECTION 301(b) OF THE 1972 ACT FOR AMEX PERSONS

Pursuant to Section 301(b) of the 1972 Act, agents of broker-dealers exempted from registration under Section 301(a) of the 1972 Act also are exempt from registration. The Staff No Action Position with respect to reliance on Section 301(a) by AMEX Persons expressed above also shall apply to agents of such AMEX Persons that met the conditions of, and were relying upon, the exemption in Section 301(b) of the 1972 Act prior to September 17, 2001.

STAFF SAFE HARBOR FOR EXEMPTION OF AMEX PERSONS FROM AGENT REGISTRATION UNDER 64 PA CODE §302.064

In addition to the foregoing Staff No Action Positions, Commission staff also would view the notice of proposed rulemaking published by the Commission on August 4, 2001 concerning Regulation 302.064 (64 Pa. Code §302.064) as providing a safe harbor exemption from agent registration under Section 301 of the 1972 Act for AMEX Persons who meet the conditions of the proposed rulemaking. The proposed rulemaking was published at 31 Pa. Bull. 4178 (August 4, 2001) and can be accessed through the Commission's Website at www.psc.state.pa.us. It is expected that these rules will become final by December 31, 2001.

FURTHER INFORMATION

Any questions concerning this release should be addressed to the Office of Chief Counsel at 717.783-1471.

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